IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL SECOND APPEAL No. 118 of 1984

LR'S OF PARAS RAM & OTHERS
V/S
LR'S OF BADRI NARAIN & ANR.

Mr. MC BHOOT, for the appellant / petitioner

Mr. NM LODHA, for the respondent

Date of Order : 21.8.2006

HON'BLE SHRI N P GUPTA,J.

ORDER

This second appeal has been filed by the defendant against the decree for eviction passed by the two learned courts below, on the ground of default in payment of monthly rent, as contemplated by Section 13(1)(a) of the Rajasthan Premises (Control of Rent & Eviction) Act, 1950, hereafter to be referred to as 'the act'.

The facts of the case are, that on 17.11.1981, the plaintiff filed the present suit for eviction, alleging the defendant to have committed default in payment of rent for a period of six months. The defendant filed written statement on 7.1.1982, contending that it was the plaintiff who did not come to receive the rent, and did not receive despite being offered. However, apprehending the intentions of the plaintiff, to make the defendant defaulter, rent for

a period of six months was deposited under Section 19A of the Act, and thus the defendant is not a defaulter. The learned trial court vide order dt. 12.7.1982, made provisional determination of rent under Section 13(3) of the Act, determining Rs. 300/- as arrears of rent for a period of 12 months, and further directed, that in the event of defendant showing receipt of deposit under Section 19A, for the sum of Rs. 150/-, that will be adjusted. This determination was made for the period Jeth Bad Ekam Samvat 2038 to Jeth Sud Punam Samvat 2039. Significantly no interest was calculated. However, the defendant was directed to deposit the amount upto 28.7.1982, and the case was fixed on 28.7.1982 for plaintiff's evidence. On 28.7.1982 the statement of the plaintiff was recorded. However, that day the defendant filed application for extension of time to deposit the determined rent. The precise averments in the application are, that defendant is not in a position to deposit the amount as determined on 12.7.1982, and it is in the interest of justice that he be granted some time. Then, he alleged to be enclosing therewith the receipt of deposit made under Section 19A, and prayed for being granted time upto 11.10.1982. It may be noticed , that 11.10.1982 was the outer limit of extendable time from the date of determination, being 12.7.1982. Be that as it may. The learned trial court on that very day accepted the application, and granted the time to deposit the determined rent upto 11.10.1982, and

fixed the case for plaintiff's evidence on 14.10.1982. On 14.10.1982 the defendant or his counsel did not appear, and the case was adjourned to 26.11.1982, on which date the plaintiff filed an application under Section 13(5) of the Act, a copy whereof was given to the counsel for the defendant, and ultimately vide order dt. 10.1.1983, this application was allowed, and the defense against eviction was struck off. Then, after completion of the evidence of the parties, the suit was decreed vide judgment and decree dt. 3.8.1983.

It was found in the order dt. 10.1.1983, that the determination was made upto Jeth Sud Punam Samvat 2039, and the defendant should have continued to pay the monthly rent thereafter in accordance with law. While the defendant has not deposited the rent accruing thereafter, inasmuch as, the rent for the month of Ashad and Sravan Samvat 2039 has not been deposited in time, nor any extension of time was granted. As such the defence was ordered to be struck off.

Then, decreeing the suit, it was found, that since the defence has been struck off, and the defendant has not deposited the rent as required by Section 13(4), he is not entitled to any benefit under Section 13(6), and finding the defendant to be defaulter, the suit was decreed. In appeal, the learned lower Appellate Court upheld the said decree.

This appeal was admitted vide order dt. 30.10.1984, by framing the following substantial question of law:-

> "Whether the appellant was entitled to benefit under Section 13(6) of the Rajasthan Premises (Control of Rent and Eviction) Act, 1950 in the circumstances of the case when he has deposited the amount of rent due and the interest thereupon determined by the Court?"

Learned counsel for the appellant giving the details of the amount deposited by the appellant, informed that after determination, the first deposit that was made on 11.10.1982.

Arguing the appeal it was contended that after the learned trial court made determination under Section 13(3) of the Act, and when that amount was deposited, the suit for default no more survives, as the suit was filed solely on the ground of default, and therefore, the impugned judgment & decree is bad. Another submission made is, that in view of the fact that the appellant has deposited the entire amount, he was entitled to be given benefit under Section 13(6) of the Act.

On the other hand, learned counsel for the respondent, supported the impugned judgment and decree.

I have considered the submissions.

I may gainfully quote the provisions of Section 13 (3), (4), (5) and (6) of the Act which read as under:-

> "(3) In a suit for eviction on the ground set forth in clause (a) of sub-section (1) with or without any of the other grounds referred to in that sub-section, the Court shall, on the first date of hearing or on any other date as the Court may fix in this behalf which shall not be more than three months after filing of the written statement and shall be before the framing of the issues, after hearing the parties and on the basis of material on record provisionally determine the amount of rent to be deposited in Court or paid to the landlord by the tenant. Such amount shall be calculated at the rate of rent at which it was last paid or was payable for the period for which the tenant may have made default including the period subsequent there to upto the end of the month previous to that in which such determination is made together with interest on such amount calculated at the rate of six per cent per annum from the date when any such amount was payable upto the date of determination:
>
> Provided that while determining the amount under this sub-section, the Court shall not take into account the amount of rent which was barred by limitation on the date of the filing fo the suit.
>
> (4) The tenant shall deposit in Court or pay to the landlord the amount determined by the Court under sub-section (3) within fifteen days from the date of such determination, or within such further time, not exceeding three months, as may be extended by the Court. The tenant shall also continue to deposit in Court or pay to the landlord, month by month the monthly rent subsequent to the period upto which determination has been made, by the fifteenth of each succeeding month or within such further time; not exceeding fifteen days, as may be extended by the Court, at the monthly rate at

> which the rent was determined by the Court under sub-section (3).
>
> (5) If tenant fails to deposit or pay any amount referred to in sub-section (4) on the date or within the time specified therein, the Court shall order the defence against eviction to be struck out and shall proceed with the hearing of the suit.
>
> (6) If a tenant makes deposit or payment as required by sub-section (4) no decree for eviction on the ground specified in clause (a) of sub-section (1) shall be passed by the Court against him.
>
> Provided that a tenant shall not be entitled to any relief under this sub-section, if having obtained such benefit or benefits under Section 13-A in respect of any such accommodation if he again makes a default in the payment of rent of that accommodation for six months."

Thus, a bare reading of the three sub-sections, being sub-sections (4), (5) and (6) does clearly show, that under sub-section (4) the tenant is not only under obligation to pay or deposit the determined amount within fifteen days from the date of determination, or within such further time not exceeding three months as may be extended by the Court, the tenant is also to continue to deposit in Court or pay to the landlord, month by month, the monthly rent <u>subsequent to the period upto which determination has been made, by the fifteenth of each succeeding month, or within such further time; not exceeding fifteen days, as may be extended by the Court, at the monthly rate at which the rent was determined by the Court</u>. Thus, the responsibility to pay the monthly rent, month by month, for

the period subsequent to the period for which determination is made, is also a sine qua non, for availing the benefit under Section 13(6). Admittedly the rent did fall due after 12.7.1982, and no deposit has been made till before 11.10.1982. May be that according to the defendant, the determination made on 12.7.1982, though purported to determine the rent upto Jeth Sud Punam Samvat 2039, while it should have included rent upto Ashad 2039, as by then the month of Ashad had already gone, but then, the fact does remain, that even if the determination did not include the rent of Ashad Samvat 2039, the defendant does not get absolved from paying rent for the month Ashad Samvat 2039. Since in view of the fact, that Ashad had already completed before determination, in the moment, for the purpose of deciding the question of entitlement of the appellant to the benefit of provisions of Section 13(6) of the Act, even if I do not take into account the non deposit of rent for Ashad Samvat 2039, still the rent for the month of Sravan did fall due on 4.8.1982, while the rent for the month of Bhadva Samvat 2039 did fall due on 3.9.1982, and admittedly these amounts have also been deposited along with determined amount, on 11.10.1982 only. It is a different story, that no application has been filed by the appellant for seeking any extension of time in depositing this monthly rent, in any case, that delay in depositing the amount, is even far beyond the possible permissible extension of time contemplated by Section 13(4) of the Act.

In that view of the matter, I am at one with the findings of the learned trial court in striking out the defence of the appellant under Section 13(5) of the Act, vide order dt. 10.1.1983.

Obviously since the defendant has not complied with the provisions of Section 13(4) of the Act, he cannot be said to be entitled to benefit of Section 13(6) of the Act.

So far the contention about the suit no more remaining a suit for eviction after the determined amount having been deposited, is concerned, of course, in some circumstances it may be so, but in any case, till the amount is deposited, the suit continues to be suit for eviction on the ground of default, and the defendant if fails to comply with other part of Section 13(4), i.e. pay or deposit the monthly rent subsequent to the period, upto which the determination is made, then he cannot escape the liability arising therefrom, being non-entitlement of the benefit under Section 13(6), and also liability to have the defence struck off under Section 13(5) of the Act. Admittedly, since before depositing the determined rent, the defendant had incurred the liability of striking out of the defence, this contention is not available to the appellant, apart from the fact, that no substantial question of law had been framed on this count.

Thus, considering from all stand points, I do not find any force in the appeal. The same is, therefore, dismissed.

At the request of the learned counsel for the appellant, the appellant is given one year's time to vacate the suit premises on the condition that the defendant gives an undertaking before the learned trial court within one month from today that on or before the expiry of the above period, he will peacefully hand over the vacant possession of the suit premises to the plaintiff and that during this period, he will not, in any manner, transfer the possession of the suit premises to anybody. Likewise, the entire decretal amount, so also all arrears of rent, if any, shall be deposited by the appellant in the trial court within one month from today and shall further continue to deposit amount equal to the monthly rent by way of damages for use and occupation by 15th of each succeeding month, till the actual delivery of possession. In case the appellant fails to comply with any of the above conditions, the respondent will become automatically entitled to execute the decree forthwith.

(N P GUPTA),J.

/Sushil/